

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2020-240-E - ORDER NO. 2021-95
FEBRUARY 22, 2021

IN RE: Bernard McFadden, Complainant/Petitioner)	ORDER DISMISSING
v. Dominion Energy South Carolina,)	COMPLAINT WITHOUT
Incorporated, Defendant/Respondent)	PREJUDICE

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Motion to Dismiss the Complaint of Bernard McFadden filed by Dominion Energy South Carolina, Inc. (“DESC” or “Company”) whereby DESC asserts that Mr. McFadden has failed to prosecute his case.

Mr. McFadden filed a Complaint against DESC, which was received by the Commission on September 17, 2020, and publicly posted on the Commission’s Docket Management System October 6, 2020. The Complaint alleges that DESC 1) filed a false meter testing report, and 2) is overcharging for services. DESC responded with an Answer and Motion to Dismiss on October 20, 2020. Upon the receipt of DESC’s Motion to Dismiss, Hearing Examiner Directive 2020-102-H was issued holding the prefiling dates and hearing date in abeyance, pending the Commission’s consideration of the Motion to Dismiss. The Commission denied the Motion to Dismiss on November 18, 2020, and instructed the Clerk’s Office to set new prefiling dates and a new hearing date.

On November 23, 2020, the Clerk’s Office issued a Notice of Rescheduled Hearing and a Prefile Testimony Letter. In pertinent part, the Prefile Testimony Letter contained the following language:

The Complainant/Petitioner must prefile with the Commission 1 copy of the direct testimony and exhibits of the witnesses it intends to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before January 20, 2021....[P]lease note failure to comply with the above on or before the dates indicated may result in the DISMISSAL of your pleading.

Mr. McFadden did not file any direct testimony, nor exhibits, by the January 20, 2021 date required in the Prefile Testimony Letter, and on January 25, 2021, DESC filed a Motion to Dismiss asserting,

As of the filing of this present Motion to Dismiss, the Company has not received any testimony and exhibits from Mr. McFadden, and no testimony and exhibits are included in this docket on the Commission's Docket Management System. As such, the Company respectfully requests that the Commission dismiss Mr. McFadden's Complaint for his failure to prosecute his case and comply with the instructions contained in the Commission's Prefile Testimony Letter.

Pursuant to Commission Regulation 103-829, Mr. McFadden had ten days to respond to the January 25, 2021 Motion to Dismiss filed by DESC. No response was received from Mr. McFadden.

On February 10, 2020, the Public Service Commission held a Business Meeting, during which the January 25, 2021 Motion to Dismiss was considered. The following Action was offered by Commissioner Power and voted on and issued by the Commission from the bench:

On January 25, 2021, Dominion Energy South Carolina, Incorporated filed a Motion to Dismiss the Complaint of Bernard McFadden for failure to provide file direct testimony and exhibits. When this matter was set for hearing before the Commission, the Clerk's Office sent a Notice of Rescheduled Hearing and its Prefile Testimony Letter per Commission Order. Mr. McFadden was instructed to file with Commission one (1) copy of his direct testimony and exhibits for any witness that he intends to present at his hearing before the Commission. To date, Mr. McFadden has failed to make a filing of Direct Testimony and Exhibits. He also did not respond

to, or comment on, the Motion to Dismiss filed by Dominion asserting that he has failed to prosecute his complaint.

I move that the Commission grant Dominion's Motion to Dismiss without prejudice. This motion will not prohibit Mr. McFadden from timely re-filing his Complaint if he intends to pursue his claim. Based upon the record available from the DMS, it is my understanding that Dominion has offered Mr. McFadden the opportunity to have another meter test with him present. While Mr. McFadden was unable to schedule a time to be present for the test, Dominion maintains in its Motion that the offer for Mr. McFadden to be present at another meter test remains available and that Mr. McFadden need only contact Dominion if he desires to have his meter tested in his presence. I would so move.

The Commission finds that Mr. McFadden has not followed the instructions issued by the Clerk's Office, which instructed him to prefile testimony by January 20, 2021. Further, Mr. McFadden did not respond to DESC's January 25, 2021 Motion to Dismiss, which cited the failure to prefile testimony. The failure to prefile testimony as required by this Commission – and the subsequent lack of response to a Motion to Dismiss predicated on that failure, constitutes a failure to prosecute the Complaint.

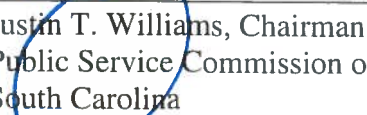
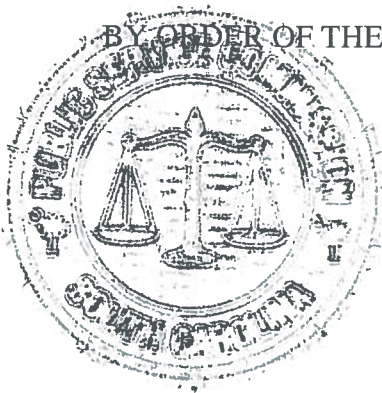
The Commission concludes that a failure to file a Complaint is a lawful, reasonable grounds for dismissal of the Complaint. Similar to a SCRPC Rule 41(b) action, here the defendant/respondent, DESC, may move for dismissal of an action or claim against it. Under the circumstances specific to this case, the Motion to Dismiss on the basis of failure to prosecute is granted.

IT IS THEREFORE ORDERED THAT:

1. The Motion to Dismiss made by Dominion Energy South Carolina, Inc. is granted without prejudice.
2. Mr. McFadden may refile his Complaint if he intends to pursue his claim.

3. Mr. McFadden may avail himself of the opportunity offered by Dominion Energy South Carolina, Inc. to have his meter tested in his presence.

4. This Order shall remain in full force and effect until further order of the Commission.



Justin T. Williams, Chairman
Public Service Commission of
South Carolina